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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 06-23833-C-7
)
JULIE ANN BRANNAN aka JULIE ANN) DC No. MEA-2
LUNDE,)
)
Debtor(s).)
-----)

12 MEMORANDUM DECISION ON MOTION FOR RELIEF FROM THE AUTOMATIC STAY
13

14 This memorandum decision is not intended for publication and
15 supplements findings of fact and conclusions of law stated orally
16 on the record pursuant to Federal Rule of Civil Procedure 52, as
17 incorporated by Federal Rule of Bankruptcy Procedure 7052.

18 American Home Mortgage Servicing, Inc., filed a motion for
19 relief from automatic stay on October 13, 2006, in this
20 bankruptcy case, which was filed September 26, 2006, and set the
21 matter for hearing on October 31, 2006. The debtor filed a
22 statement of intention to surrender the property. The movant
23 accepted the debtor's opinion of the value of the property of
24 \$305,000. The movant is owed \$295,680.14. In addition, there is
25 a second mortgage debt of \$20,615. The movant requests that it
26 be allowed reasonable attorney's fees and costs of \$700.

27 No effort has been demonstrated to obtain a stipulation from
28 the debtor and/or the trustee regarding relief from the automatic
20

1 stay in order to minimize the expense of obtaining relief from
2 stay in light of the debtor's statement of intention to surrender
3 the property. A filing fee for the motion for relief from stay
4 in the amount of \$150 was paid, which filing fee would not have
5 been required if there had been a stipulation for relief from
6 stay. Judicial Conference of the United States, Bankruptcy
7 Court Miscellaneous Fee Schedule, item 20. ("No fee is required
8 for a motion for relief from the co-debtor stay or for a
9 stipulation for court approval of an agreement for relief from a
10 stay.")

11 The amount owed to American Home Mortgage Servicing, Inc.,
12 is not greater than the value of the property, which value is,
13 however, less than the total debt owed on the first and second
14 mortgages. While 11 U.S.C. § 506(b) permits reasonable fees,
15 costs, or charges provided for under an agreement or state
16 statute with respect to an over-secured claim, any such award
17 would necessarily reduce the equity theoretically available to
18 the second mortgagee if the property were to be sold for
19 \$305,000.

20 Since the \$150 filing fee would not have been necessary if
21 there was a stipulation and since the expense of obtaining and
22 preparing a stipulation is normally less than the expense of
23 preparing a motion for relief from stay, the reasonable fees and
24 costs are deemed to be a total of \$350.

25 An appropriate order will issue.
26 Dated: November 8, 2006.
27
28

UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

Routh Crabtree Olsen
505 N. Tustin Ave., #243
Santa ana, CA 92705

John R. Roberts
PO Box 1506
Placerville, CA 95667

Timothy J. Stock
PO Box 162286
Sacramento, CA 95816-2286

Dated: 11-13-04

DEPUTY CLERK